84-906

No.

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ALEXANDER L. STEVAS,
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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

GARY CARSON PRO SE PETITIONER

v.

WESTERN ELECTRIC CO., INC.
NOW DOING BUSINESS AS AMERICAN
TELEPHONE & TELEGRAPH TECHNOLOGIES, INC.

REPLY BRIEF OF PETITIONER

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Submitted by:

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QUESTIONS PRESENTED

The Constitutional Question (14th Amendment), respecting Petitioner's due process and equal protection of the laws, rights was properly before the District Court and the Sixth Circuit Courts of Appeals.

Whether the courts below applied proper standard to essentially undisputed facts when they determined that petitioner had failed to carry his burden of proof under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. and 42 U.S.C., §1981.

Petitioner, in his complaint to the District Court had requested injunctive relief respecting all of the issues adjudicated at trial: whether or not the courts below breached their duty to uphold Rule 52(a) Federal Rules of Civil Procedure requiring them to find the facts and state the conclusions of law which constitute the grounds of their action.

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

PETITIONERS REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

I. Irrelevancy of Respondent's Legal Arguments

Respondent's brief in opposition to petition for a writ of certiorari carefully avoids addressing the genuine issues of fact that Pro Se Petitioner has raised on appeal to this Court. The importance and substantiality of the questions presented have not been denied by Respondent, nor can they be.

The District Court's 30-page opinion, now before this Court and appended to Respondent's brief in opposition, together with the Court of Appeals ambiguous, non-definitive, summary affirmation clearly shows misapplication of the law here.

In the District Court's opinion, p. 14, he illustrates his foundation.

This Supreme Court's tripartite requirements to "analyze the charges in light of ALL the surrounding facts and circumstances." 1st level: Petitioner proving his prima facia case against Respondent, 2nd level: Respondent's effort to show a non-discriminatory reason for employee's rejection, 3rd level: Petitioner's chance to rebut by the preponderance of the evidence that Respondent's reasons were not true, but pretexual.

Rule 52(a) presupposes that the trial court, having opportunity to first-hand observe and rule in factual disputes, judge credibility of witnesses, their demeanor, etc., is best suited to fairly rule in matters of equity. However, that is not the case where, as here, Rule 52 (a) is misspplied. United States v. General Motors Corp., 384 U.S. 141 (1966). The facts are essentially undisputed. The

only witness the District Court criticized was employee William Ralph, opinion at 21, 22 whose testimony was minor in relation to the preponderance of the other evidence, and plays a restricted role and was not at issue before the Court of Appeals.

II. The Law Requires the Appellate Courts to Determine the Facts Independently

Although the letter of the law found in Act of Feb. 16, 1875, Ch. 77 §1, 18 Stat. 315, requiring Federal Circuit Courts of Appeals to find every fact material to its conclusions and upheld by this Court in E.A. Packer v. New Jersey Lighterage Co., (1891) 140 U.S. 360, appears to have been repealed, the Spirit of the law lives on and has become part of the Federal Common Law and should not be disparaged by this Court. Indeed the

case at bar is in conflict with the Sixth Circuit's own case law, Carpenters District Council, etc. v. Cicci, 261 F.2d 5 Sixth Circuit (1958), also conflicting this Court is Jacobellis v. State of Ohio, 378, U.S. 84 (1964).

In Guzick v. Drebus, 431 F.2d 594 (1970) Sixth Circuit, the court held:

> [1] We believe that the Supreme Court has commanded that, when dealing with questions of constitutional magnitude, we are not at liberty to accept the fact trier's findings merely because we consider them not "clearly erroneous" as that term is employed in Rule 52(a) F. R.Civ.P. We must make our own examination of the material from which decision is made. Feiner v. New York, 340 U.S. 315, 322-325, 71 S.Ct. 303, 95 L.Ed. 267 (1951) (Black Dissenting); Edwards v. South Carolina, 372 U.S. 229, 235, 83 S.Ct. 580, 9 L.Ed.2d 697 (1963); Jacobellis v. Ohio, 378 U.S. 134, 189, 84 S.Ct. 1676 12 L.Ed.2d 793 (1964).

[2] Obedient to that rule, we have made our own examination of the record before us and are persuaded that the factual findings of the District Judge are fully supported by the evidence and we agree with them.

CONCLUSION

The Sixth Circuit Court of Appeals has rendered a decision in conflict with its own previous decisions and other appellate courts and has so far departed from the accepted and usual course of judicial proceedings in not finding its facts material to its conclusions and has so far sanctioned a misapplication of law and aforementioned plain error by the lower court as to call for an exercise of this court's powers of supervision and to uphold the integrity and reputation of these proceedings.

Therefore, this Court should issue a Writ of Certiorari to the Sixth Circuit Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gary Carson, Petitioner Pro Se and appellant herein, hereby certify that on the 21st day of November, 1984, I served a copy of the foregoing to the Supreme Court on the above named defendant and appellee by depositing same in a United States Post office with first class postage prepaid, addressed to the attorney of record of said defendant and appellee at his post office address to wit: David R. Kelleher, 65 E. State St., Columbus, OH 43205.

Gary Carson

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